

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

23

DECISION

TOPIC

Adopted and Filed: 567 IAC Chapter 1-amendment to the Commission's quorum and voting requirements in Rule 1.6.

This is the second half or public participation portion of the “double barrel” procedure utilized for this amendment. The amendment modifies the voting requirements for the Commission. The amendment modifies the voting requirements for the Commission. Under the amendment, for official action by the Commission the requisite number of commissioners varies depending on the number of commissioners currently appointed by the Governor. The amendment provides that four votes are sufficient to take action when there are only seven appointed members.

One oral comment (also provided in written form) was received at the public hearing on July 22, 2008. That comment is attached. Unless the Commission decides to modify the language, the following amendment is identical to the amendment that was Adopted and Filed Emergency and became effective June 13, 2008. If the Commission adopts the amendment at this time, the Adopted and Filed Emergency Amendment would be rescinded when this filing become effective.

Randy Clark
Iowa DNR
August 4, 2008

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby amends Chapter 1, "Operation of Environmental Protection Commission," Iowa Administrative Code.

The amendment modifies the voting requirements for the Commission. Under the amendment, for official action by the Commission the requisite number of commissioners varies depending on the number of commissioners currently appointed by the Governor. The amendment provides that four votes are sufficient to take action when there are only seven appointed members.

From late November, 2007, until very recently, the Commission has had only seven appointed members from a statutory total of nine members. Because of the number of votes required to take action, these two vacancies have resulted in delayed agency action, gridlock, stalemate, and in the minority deciding an issue. The Commission wishes to adopt a rule to provide that four votes are sufficient to take action when there are only seven appointed members. This rule is authorized by Iowa Code section 455A.6(5) which allows the Commission to determine by rule the number of votes required to take action, when a quorum is present.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 2, 2008, as ARC 6922B. One oral comment was received at the public hearing on July 22, 2008. No changes have been made to the amendment as set forth in the Notice of Intended Action.

This amendment shall become effective October 15, 2008, at which time the Adopted and Filed Emergency (ARC 6921B) amendment is hereby rescinded.

This amendment is intended to implement Iowa Code section 455A.6.

The following amendment is adopted.

Amend rule 567—1.6(17A,455A) as follows:

567—1.6(17A,455A) Quorum and voting requirements.

1.6(1) Quorum. ~~A majority of the members of the commission~~ Five or more commissioners present at a meeting constitutes a quorum.

1.6(2) Voting.

a. Voting requirements if eight or nine commissioners are currently appointed. The concurrence of a majority of the members of the commission is required to determine any matter before the commission for action, except for a vote to close a meeting which requires the concurrence of two thirds of the members of the commission, or the concurrence of all members present if less than two thirds are present. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

c. Voting requirements to close a meeting. Notwithstanding paragraph 1.6(2)“a” or 1.6(2)“b,” a vote to close a meeting shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

Date

Richard A. Leopold, Director

From: Nicole Molt [mailto:nmolt@iowaabi.org]
Sent: Tuesday, July 22, 2008 2:55 PM
To: Clark, Randy [DNR]
Subject: Comments from Public Hearing

Randy,

Below are my comments from the public hearing. Hope this is helpful. Please contact me if you have any questions regarding my comments.

Thanks,
Nicole

ABI members are opposed to the Notice of Intended Action in ARC 6922B and the Emergency Rule in ARC 6921B. ABI believes that the Environmental Protection Commission (EPC) overstepped it's authority and is infringing upon legislative intent and authority with these rulemakings. We request that the rulemakings be rescinded.

First, the genesis of these rulemakings was a brief period of time, late November 2007 until June 2008, when there were seven instead of nine appointed commissioners. This made it more difficult to obtain a quorum, but such a transition is a normal part of the political process and is not a basis for a rulemaking, let alone an emergency rulemaking. Issues related to obtaining a quorum should be dealt with by attendance rules, not changes to voting rules that diminish the democratic process intended by the Iowa legislature.

Second, only three votes were impacted by a lack of appointed seats during this brief time, and two of those votes regarded the election of officers within the EPC. This is not a sufficient basis for a rulemaking, let alone an emergency rulemaking.

Third, the legislature created the EPC with specific representatives for each of the nine appointed seats. Positions are specifically created for citizens, agriculture, manufacturing, and finance. To allow a majority vote of seven commissioners, rather than a majority of the nine intended commissioners, is contrary to the democratic check and balance process that was legislatively intended for the EPC. To allow a lesser majority vote of seven commissioners means that someone's voice will go unheard, be it manufacturing, agriculture, citizens, or finance. This is not a decision that should be made via rule by the EPC. It is paradigm shift away from legislative intent. The EPC should maintain legislative intent and protect democracy by rescinding these rulemakings.

Therefore, ABI requests a rescission of these rulemakings. If maintaining a quorum is a serious issue then the EPC should promulgate mandatory attendance rules instead of infringing upon the democratic voting process. Thank you for your time and consideration.

Nicole Molt

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